



W.P.(MD)No. 20354 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.02.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No. 20354 of 2016

L.Russel

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court, Tirunelveli.

2. The Management,
Tamil Nadu State Transport Corporation,
Tirunelveli Division, Nagercoil Region,
Ranithorram, Nagercoil 629 001.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorarified Mandamus*, to call for the records on the files of the 1st respondent pertaining to its order in unnumbered I.D. ----of 2016, dated 23.08.2016 and to quash the same and consequently, direct the 1st respondent to pass orders on merits.

For Petitioner : M/s.T. Jeen Joseph
G.V.Selvan

R-1 : Court

For R-2 : Mr.K.Sathiya Singh



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ORDER

The Writ petition is filed to direct the Labour Officer to entertain the un-numbered I.D.No.--- of 2016, dated 23.08.2016.

2. The 1st respondent has declined to number the said I.D., since the petitioner has preferred the I.D., after lapse of three years. Under Section 2(A) of Industrial Dispute Act, three years limitation period is granted.

3. The learned counsel appearing for the petitioner submitted that the petitioner was dismissed from service on 16.05.2012, however the approval for dismissal was granted on 08.04.2014. The petitioner had preferred a petition before the Labour Officer on 18.05.2016. If the date of approval is taken as the date, then the petition is filed within three years period of limitation.

4. The charge against the petitioner is that, he had quarreled with Checking Inspector and passengers. The further allegation against the petitioner is he lost cash book, ticket and other documents. The 2nd respondent has initiated disciplinary proceedings. But the contention of the petitioner is that, taking



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advantage of the assault and scuffle between the passengers and the Checking Inspector, the Checking Inspector has taken away the cash bags, tickets and other documents. In fact, the petitioner has preferred a complaint to the Nithiravilai Police Station and the same was registered in Crime No.122 of 2016 for the offences under Sections 323 and 379 of IPC, for missing of cash bag and tickets.

5. The further contention of the petitioner is that the respondents have not taken any action against the Checking Inspector, but they have taken action against the petitioner alone. Aggrieved over the said action, the petitioner has contested the Disciplinary Proceedings. However, the respondents have not considered the petitioner's defence, finally dismissed the petitioner from service, through the impugned order. Thereafter, the 2nd respondent has submitted the approval.

6. The learned counsel appearing for the 2nd respondent submitted that three years limitation is granted from the date of dismissal, discharge, retrenchment or otherwise terminated, therefore, the petitioner cannot be granted any relief.



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7. On perusal of amendment of Section 2(A)(3) of the Industrial Dispute Act, where, it is stated, any conciliation proceedings can be initiated and if conciliation is not modified, the employees had liberty to challenge the same before the Labour Court. Therefore, conciliation proceedings as well as the approval period ought to be condoned. Therefore, this Court is inclined to condone the period from 16.05.2012 to 18.05.2016.

8. The learned counsel appearing for the petitioner further submitted that now the age of the petitioner is 65 years. The charge against the petitioner is that the petitioner had misbehaved with the passengers as well as the Checking Inspector. Therefore, this Court is inclined to entertain this writ petition on merits, rather sending the employee for adjudicating the entire issue before the Labour Court, by considering his age. Hence the punishment of dismissal is modified as Compulsory Retirement by fixing the date of dismissal as date of compulsory retirement i.e. 16.05.2012.

9. The petitioner had serviced from 01.12.1987 to 16.05.2012. Therefore, the 2nd respondent is directed to modify the punishment as compulsory



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retirement and pay terminal benefits and other benefits, i.e., applicable to the punishment of 'Compulsory Retirement' for the period from the date of confirmation of the petitioner's service until the date of dismissal. The said exercise shall be completed within a period of eight weeks from the date of receipt of the copy of the order.

10. With these directions, this Writ Petition is allowed. No costs.

Index : Yes / No
Internet : Yes
ksa

08.02.2023

To

The Presiding Officer,
Labour Court,
Tirunelveli.



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S.SRIMATHY, J

ksa

**Order made in
W.P.(MD)No. 20354 of 2016**

08.02.2023